

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERICO PEDROZA DIAZ, ESAU
USCANGA HERNANDEZ, GUSTAVO
TORRES GARDUNO, RUBEN BERNAL
GUADARRAMA, MIGUEL PEDROZA
BERNAL, ALEJANDRO OSORIO
MADRIGAL, RUDY E. PALOMEQUE
BARRIOS, JUAN PEDROZA BERNAL,
JAVIER AMBRIZ ALVARADO, REUBEN
CHAVEZ, and ARTURO AMBRIZ
ALVARADO,

Plaintiffs,

v.

JOHN JONES, WEST COAST FRAMERS
LLC, DEVELOPERS SURETY AND
INDEMNITY CO., and LAKELAND
SINGLE FAMILY 1 LLC,

Defendants.

No. C05-339Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The Court finds that Plaintiffs had authority to voluntarily dismiss their case under Fed. R. Civ. P. 41. The Rule provides that a plaintiff may voluntarily dismiss an action without order of the court “at any time before service by the adverse party of an answer or of a motion for summary judgment...” Fed. R. Civ. P. 41(a)(1)(i). Such a dismissal is without prejudice, except that “a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.” Fed. R. Civ. P.

1 41(a)(1)(ii). In this case, Defendants have not filed an answer or a motion for summary
2 judgment. Accordingly, Plaintiffs' voluntary dismissal is appropriate. The dismissal is
3 without prejudice because Plaintiffs have not before dismissed an action based on or
4 including the same claims that they made in this case.

5 (2) Defendants' request for sanctions under Fed. R. Civ. P. 11 was voluntarily
6 withdrawn. Defendants' Reply, docket no. 31, pg. 10. Accordingly, Defendants' original
7 request for sanctions is now moot.

8 (3) The Court DENIES Defendants' Motion for Attorney Fees, docket no. 23. The
9 Court finds that Wash. Rev. Code 4.84.185 does not apply in federal court. Further, the
10 Court finds that Wash. Rev. Code 4.84.185 is discretionary. See In re Recall of Pearsall-
11 Stipek, 136 Wn.2d 255, 265 (1998) ("an award of attorney fees is left to the trial court's
12 discretion..."); State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 903 (1998) ("the
13 appropriate standard of review regarding sanctions under the statute or rule is abuse of
14 discretion..."); Fluke Capital & Mgmt. Servs. Co. v. Richmond, 106 Wn.2d 614, 625 (1986),
15 reversed on other grounds ("an award of attorney fees that is authorized by statute is left to
16 the trial court's discretion..."). Even if Wash. Rev. Code 4.84.185 were applicable in federal
17 court, this Court would deny Defendants' Motion for Attorney Fees, docket no. 23.

18 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
19 record.

20 Filed and entered this 14th day of October, 2005.

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BRUCE RIFKIN, Clerk

s/ Casey Condon
By _____
Casey Condon
Deputy Clerk